

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

ARTHUR BUENDIA,
Appellant

v.

C-18-112

EXECUTIVE OFFICE OF
HEALTH AND HUMAN SERVICES (EOHHS),
Respondent

Appearance for Appellant:

Pro Se
Arthur Buendia

Appearance for Respondent:

Sheila Anderson
EOHHS
600 Washington Street
7th Floor
Boston, MA 02111

Commissioner:

Christopher C. Bowman

DECISION

On June 22, 2018, the Appellant, Arthur Buendia (Mr. Buendia), pursuant to the provisions of G.L. c. 30, s. 49, filed an appeal with the Civil Service Commission (Commission), appealing the June 13, 2018 decision of the state's Human Resources Division (HRD) in which HRD: a) affirmed EOHHS's denial of his request to be reclassified from Program Coordinator II (PC II) to Program Coordinator III (PC III); and b) determined that Mr. Buendia's should be reallocated to the title of Accountant IV (which is the same pay grade of PC II).

On August 14, 2018, I held a pre-hearing at the offices of the Commission and a full hearing was held at the same location on November 1, 2018¹. The hearing was digitally recorded and one CD was made of the hearing.²

FINDINGS OF FACT:

Twelve (12) exhibits were entered into evidence. Based on the documents submitted into evidence and the testimony of:

For EOHHA:

- James LeBlanc, Director of Fiscal Management;
- Cindie Smey, Planning and Staffing Coordinator;

For Mr. Buendia:

- Arthur Buendia, Appellant;

and taking administrative notice of all matters filed in the case, and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

Background

1. Mr. Buendia has been employed by EOHHS for approximately nineteen (19) years.
(Stipulated Fact)
2. Mr. Buendia currently works for MassHealth within EOHHS. (Stipulated Fact)
3. In Massachusetts, Medicaid and the Children’s Health Insurance Program (CHIP) are combined into one program called MassHealth. MassHealth members may be able to get

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

doctors visits, prescription drugs, hospital stays, and many other important services.

(mass.gov)

4. Prior to submitting his request for reclassification to EOHHS on August 22, 2017, Mr. Buendia was classified as a PC II. (Stipulated Fact)
5. On May 1, 2018, EOHHS denied Mr. Buendia's request for reclassification to PC III. (Stipulated Fact)
6. Cindie Smey, the Planning and Staffing Coordinator for EOHHS, reviews requests for reclassification, including the one Mr. Buendia filed. Based on her review, she concluded that Mr. Buendia's duties and responsibilities fell under the Accountant series. She recommended that EOHHS review various titles (i.e. – PC titles) to determine whether they should be reallocated to the Accountant series. (Testimony of Ms. Smey)
7. Mr. Buendia appealed the denial from EOHHS to HRD. (Stipulated Facts)
8. On June 13, 2018, HRD affirmed the EOHHS decision to deny the request for reclassification to PC III and determined that Mr. Buendia should be classified as an Accountant IV, which is the same pay grade as a PC II. (Stipulated Facts)
9. On June 22, 2018, Mr. Buendia filed an appeal of HRD's decision to the Commission. (Stipulated Fact)

HRD Job Specifications (Last Updated in 1987)

10. Incumbents of position in the Program Coordinator Series coordinate and monitor assigned program activities; review and analyze data concerning agency programs; provide technical assistance and advice to agency personnel and others; respond to inquiries; maintain liaison with various agencies; and perform related work as required. The basic purpose of this work

is to coordinate, monitor, develop and implement programs for an assigned agency. (Exhibit 4)

11. A PC III is the third-level supervisory job in the series. (Exhibit 4)
12. A PC III: 1) develops and implements standards to be used in program monitoring and/or evaluation; 2) oversees and monitors activities of the assigned unit; and 3) confers with management staff and others in order to provide information concerning program implementation, evaluation and monitoring and to define purpose and scope of proposed programs. (Exhibit 4)
13. Incumbents of the position in the Accountant Series examine accounting data; prepare financial statements and reports; maintain accounting records; and perform related work as required. The basic purpose of this work is to examine, analyze and interpret accounting records for the purpose of giving advice or preparing statements. (Exhibit 5)
14. An Accountant IV is the third-level supervisory job in the series. (Exhibit 5)
15. An Accountant IV: 1) approves or recommends changes or improvements in agency accounting procedures; 2) testifies at hearings, grand jury sittings and court cases involving discrepancies, adjustments or other findings, corroboration of evidence, consumer issues, special investigations, etc.; 3) analyzes project expenditure patterns in order to make recommendations or take appropriate action to control spending; and 4) computes free cash to be certified as available for appropriation by municipalities and districts. (Exhibit 5)

Mr. Buendia's Job Duties and Responsibilities

16. Mr. Buendia works in the Finance Unit for MassHealth. (Testimony of Mr. Buendia)
17. Mr. Buendia's duties fall under the Accounts Receivable section of the Finance Unit.
(Testimony of Mr. Buendia)

18. The Accounts Receivable unit is responsible for collecting overpayments made by MassHealth to providers and members. (Testimony of Mr. Buendia)
19. Providers include such entities as hospitals, transportation companies, etc. (Testimony of Mr. Buendia)
20. Overpayments develop for various reasons. For example, a service provided by a hospital may have been “mis-coded” resulting in an overpayment that must be paid from that hospital to MassHealth. (Testimony of Mr. Buendia)
21. Mr. Buendia reviews weekly reports that list all overpayments due to MassHealth. (Testimony of Mr. Buendia)
22. More than 50% of the overpayments are recouped automatically (i.e. – through intercepts) and require no manual intervention. (Testimony of Mr. Buendia)
23. Mr. Buendia’s duties and responsibilities involve those overpayments which require some manual intervention. For example, if a provider has gone through a transfer of ownership, Mr. Buendia will do research online to determine the current ownership and liability. (Testimony of Mr. Buendia)
24. Approximately twenty (20) overpayments weekly require this type of research. (Testimony of Mr. Buendia)
25. After completing this research, Mr. Buendia makes notes regarding what actions are required to collect the overpayment and meets with two (2) other employees of the Finance Unit, one who is classified as an Accountant IV and one who is classified as a PC I. (Testimony of Mr. Buendia and Exhibit 6)

26. At this meeting, Mr. Buendia reviews the actions that need to be taken and these two (2) other employees complete those actions (i.e. – doing a “transfer” and issuing a letter to the provider). (Testimony of Mr. Buendia)
27. After the letters, which are signed by Mr. Buendia, are received by the entity, Mr. Buendia fields phone calls from the entity that received the letter, answering any of their questions. (Testimony of Mr. Buendia)
28. If an overpayment is not satisfied in a timely manner, Mr. Buendia refers the matter to the legal unit; meets with the legal unit; and reviews all actions that have been taken by the Finance Unit to collect the payment. The file is then transferred to the legal unit, but, unless directed otherwise, manual collection efforts continue. (Testimony of Mr. Buendia)
29. Mr. Buendia is contacted by other units to discuss overpayment issues and what actions need to be taken to collect the overpayments. (Testimony of Mr. Buendia)
30. Mr. Buendia makes suggestions to improve the overpayment collection rate, including the use of liens on property. (Testimony of Mr. Buendia)
31. Mr. Buendia, as part of his research to collect an overpayment, will sometimes identify fraudulent activity that he refers to others for follow-up. (Testimony of Mr. Buendia)
32. Generally, Mr. Buendia, over the years, has become a subject matter expert who is a “go-to person” for other employees regarding issues related to overpayments, but he does not formally supervise any employees. (Testimony of Mr. LeBlanc)
33. Mr. Buendia’s FYI6 EPRS states in relevant part:

“Arthur Buendia is truly an amazing MMIS Accounting AR Specialist. Arthur’s knowledge of the Provider Recoupment and Deduction Process is a true asset to EOHHS. Program Units often seek Arthur’s advice on the process or procedures of AR set ups and any difficult AR Recoupments. He has been the ‘teacher’ to many new staff and continues to be the go to person for anyone that may have a recoupment question. Arthur is very patient and customer oriented, it is a lesson in itself to hear Arthur on the phone with a Provider. He fully explains

the AR Recoupment process and is clear and concise in his presentation of the governing laws or precedents; he is extremely patient with difficult Providers and is able to alleviate the Provider's concerns or misunderstandings on a Recoupment Account. Arthur is a true team player, he has assisted AP Payroll and is always the first to raise his hand to learn or help other departments." (Exhibit 13)

34. Mr. Buendia recently applied for promotion to the Accounts Receivable Coordinator position, which was posted as a PC III. Although another candidate was selected, Mr. Buendia spoke highly of her during these proceedings and stated that he is working to assist her with the transition into the Finance Unit. (Testimony of Mr. Buendia)

Legal Standard

"Any manager or employee of the commonwealth objecting to any provision of the classification affecting his office or position may appeal in writing to the personnel administrator and shall be entitled to a hearing upon such appeal Any manager or employee or group of employees further aggrieved after appeal to the personnel administrator may appeal to the civil service commission. Said commission shall hear all appeals as if said appeals were originally entered before it." G.L. c. 30, § 49.

Mr. Buendia must show that he performs the distinguishing duties of the PC III title more than 50% of the time. See Gaffey v. Dept. of Revenue, C-11-126 (July 18, 2011); see also Bhandari v. Exec. Office of Admin. and Finance, 28 MCSR 9 (2015) (finding that "in order to justify a reclassification, an employee must establish that he is performing duties encompassed within the higher level position the majority of the time....").

Analysis

By all accounts, Mr. Buendia, whose tenure in state government spans twenty-seven (27) years, is a valued member of the EOHHS team. He is described by the Director of Financial Management as a subject matter expert who is a "go-to person" for other employees. The EPRS

referenced in the findings amplifies on that, providing specific examples of Mr. Buendia's proactive and assistive nature. His testimony before the Commission provided confirmation of his high level of dedication and professionalism.

His duties, however, as he acknowledged at the hearing, fall squarely within the Accountant job series which state in relevant part that "... The basic purpose of this work is to examine, analyze and interpret accounting records for the purpose of giving advice or preparing statements." The documents submitted as exhibits generally confirm that Mr. Buendia's job duties fall under the Accountant series.

While I credit Mr. Buendia's testimony that a former supervisor heavily relied on him for technical advice and may have delegated some responsibility to him, that is no longer the case today. Even if it were, many of those delegated duties would fall under the Accountant IV title which, as written, anticipates that the incumbent will exercise both direct and indirect supervision. While there is arguably some overlap between the Accountant series and the Program Coordinator Series, that does not justify a reclassification, when, as referenced above, the majority of duties performed by Mr. Buendia fall more squarely into the Accountant series.

I infer, but am not certain, that HRD's decision to classify Mr. Buendia as an Accountant IV, a third-level supervisory position, took into account that a lesser classification (i.e. – Accountant II or III) would effectively result in a demotion. To ensure clarity, nothing in this decision is meant to establish a precedent for disregarding the required supervisory responsibilities, which the Commission reviews on a case-by-case basis.

Conclusion

For all of the above reasons, Mr. Buendia's appeal under Docket No. C-18-112 is *denied*.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on November 8, 2018.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Arthur Buendia (Appellant)
Sheila Anderson (for Respondent)